

Message Text

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41

ACTION ARA-10

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O 231545Z FEB 76

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC IMMEDIATE 7320

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STADIS//////////

EO 11652: N/A

TAGS: EINV, CI

SUBJECT: OPIC/CHILE BILATERAL AGREEMENT

REF: STATE 41532

1. EMBASSY WOULD WELCOME AGREEMENT AMONG CONCERNED US AGENCIES ALONG LINES OF DRAFT LETTER DEPARTMENT HAS KINDLY SENT US IN REFTEL. WHEN EXECUTED, PROVISIONS OF LETTER WILL REOPEN ON A LIMITED BASIS USE OF OPIC INSURANCE FACILITIES TO ENCOURAGE AMERICAN INVESTMENT. CHILEANS WILL BE HELPED IN IMPLEMENTING THEIR DESIRE TO STIMULATE PRIVATE FOREIGN INVESTMENT IN THEIR COUNTRY. THE US WILL HAVE FOLLOWED THROUGH, AT LEAST TO SOME EXTENT, ON A LINE IT HAS BEEN PURSUING WITH THE CHILEANS FOR MANY MONTHS.

2. WE HAVE NOTED WITH INTEREST THE RATIONALE GIVEN FOR TIGHTLY LIMITING THE PROPOSED NEW PROGRAM, SO AS TO AVOID ANY ASSISTANCE TO INVESTMENTS IN LARGER SCALE EXTRACTIVE INDUSTRIES. IF OUR UNDERSTANDING IS CORRECT, OPIC HAS NOT RECENTLY EXTENDED INSURANCE TO LARGE-SCALE EXTRACTIVE INVESTMENT PROJECTS ELSEWHERE IN LATIN AMERICA. NEVERTHELESS WE ASSUME THERE IS NO PROHIBITION, IN LAW OR OPIC PRACTICE, AGAINST OPIC INSURANCE FOR THIS KIND OF INVESTMENT, NOR, AS WE UNDERSTAND IT, IS THE FACT OF PAST EXPROPRIATION OF FOREIGN INVESTMENT IN A COUNTRY NECESSARILY

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A BAR TO FUTURE OPIC PROGRAMS. IF OPIC INSURANCE IS TO BE

MADE AVAILABLE FOR OTHER COUNTRIES WITH A BACKGROUND OF EXPROPRIATION SIMILAR TO CHILE'S, WE WOULD HOPE THAT, OVER TIME, THE CONTINGENT POSSIBILITY OF FUTURE PROBLEMS IN CHILE WOULD NOT WEIGH MORE HEAVILY HERE THAN IN DOES IN SUCH COUNTRIES. INDEED, AS THE DEPARTMENT IS AWARE, THE PRESENT REGIME IN CHILE ENDORSES MORE STRONGLY THAN ALMOST ANY OTHER LA COUNTRY THE POLICIES AND CONCEPTS OF INTERNATIONAL LAW RELATING TO FOREIGN INVESTMENT ESPoused BY THE UNITED STATES.

3. OUR SOLE PROBLEM WITH THE DRAFT LETTER ARISES FROM ITS STIPULATION THAT ANY EXTRACTIVE INDUSTRY PROJECT TO BENEFIT FROM OPIC PROGRAMS SHOULD NOT COST MORE THAN \$10 MILLION AND THAT US PARTICIPATION BE IN THE FORM OF A MINORITY INTEREST. THERE ARE, HOWEVER, OTHER FACTORS WHICH CAN AFFECT THE LIKELIHOOD OF INVESTMENT DISPUTES OR THE EASE OF THEIR RESOLUTION. FOR EXAMPLE, A US CAPITAL CONTRIBUTION, IF IN THE FORM OF DEBT, MIGHT IN THE EVENT OF AN EXPROPRIATION CREATE FEWER DIFFICULTIES FOR BILATERAL RELATIONS THAN THOSE LIKELY TO FLOW FROM THE SAME DOLLAR VALUE CONTRIBUTION IN THE FORM OF EQUITY. DEBT AVOIDS THE PROBLEM OF EQUITY VALUATION (BOOK, MARKET, GOING CONCERN) WHICH HAS PROVED IN THE PAST TO BE A MAJOR OBSTACLE TO A PROMPT AGREEMENT ON COMPENSATION, AND HENCE A GENERATOR OF BILATERAL TENSION. THE DEPARTMENT MIGHT WISH TO CONSIDER, THEREFORE, A HIGHER LIMIT IF THE INVESTMENT WERE EXPRESSED IN THE FORM OF DEBT.

4. FURTHERMORE, THE STRUCTURE OF THE JOINT VENTURE, AND STRENGTH OF OTHER PARTNERS, MIGHT COUNT MORE HEAVILY IN WEIGHING EXPROPRIATION RISK THAN THE FACTOR OF SIZE ALONE. FOR EXAMPLE, THERE IS UNDER DISCUSSION A POSSIBLE COPPER CONSORTIUM IN WHICH THE GOVERNMENTS OF VENEZUELA AND BRAZIL WOULD PARTICIPATE DIRECTLY. IT IS VERY DIFFICULT TO CONCEIVE OF EXPROPRIATION IN SUCH A CASE, AND, ACCORDINGLY, A HIGHER LIMIT MIGHT BE JUSTIFIED.

5. HENCE, WE WOULD PREFER A LITTLE MORE FLEXIBILITY, WHICH COULD BE OBTAINED BY INSERTING A NEW SENTENCE AT THE END OF THE LETTER TO READ:

BEGIN TEXT. FURTHER, SHOULD OPIC CONSIDER THAT SPECIAL CIRCUMSTANCES IN A PARTICULAR CASE WOULD WARRANT AN EXCEPTION
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TO THE FOREGOING GUIDELINES, OPIC WILL CONSULT WITH THE DEPARTMENT AT AN EARLY STAGE. END TEXT.
POPPER

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